

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

Official Minutes

October 4, 2002

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**MINUTES OF REGULARLY SCHEDULED HIGHWAYS AND
TRANSPORTATION COMMISSION MEETING HELD IN
CLAYTON, MISSOURI, ON FRIDAY, OCTOBER 4, 2002**

A regularly scheduled meeting of the Missouri Highways and Transportation Commission held on Friday, October 4, 2002, in Clayton, Missouri, was called to order at 9:30 a.m. by the Chairman, Mr. Ollie W. Gates. The following members were present: Mr. W. L. (Barry) Orscheln, Vice Chairman, Ms. Marjorie B. Schramm, Mr. Bill McKenna, Mr. James B. Anderson, and Mr. Duane S. Michie.

The meeting had been called pursuant to Section 226.120 of the 2000 Revised Statutes of Missouri, as amended. The Secretary verified that notice of the meeting was posted in keeping with Section 610.020 of the 2000 Revised Statutes of Missouri, as amended.

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Mr. Henry Hungerbeeler, Director of the Missouri Department of Transportation; Mr. Rich Tiemeyer, Chief Counsel for the Commission; and Mrs. Mari Ann Winters, Secretary to the Commission, were present on Friday, October 4, 2002.

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*"Department" or "MoDOT" herein refers to Missouri Department of Transportation.
"Commission" or "MHTC" herein refers to Missouri Highways and Transportation Commission.*

CLOSED MEETING

The agenda of the closed meeting was posted in keeping with Sections 610.020 and 610.022, RSMo., including the following statutory citations allowing the meeting to be closed:

1. Section 610.021(11), (12) – Specifications for competitive bidding, sealed bids, or negotiated contracts.
2. Section 610.021(1) – Legal actions and attorney-client privileged communications.
3. Section 610.021(3), (13) – Personnel administration regarding particular employees.

The Commission met in the Closed Meeting from 8:30 a.m. until 9:30 a.m.

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APPROVAL OF MINUTES, REGULARLY SCHEDULED HIGHWAYS AND TRANSPORTATION COMMISSION MEETING, SEPTEMBER 6, 2002

Upon motion by Commissioner Michie, seconded by Commissioner Schramm, the Highways and Transportation Commission unanimously approved the minutes of its September 6, 2002, regularly scheduled meeting. The Chairman and Secretary to the Commission were authorized and directed to sign and certify said minutes and to file same in the office of the Secretary.

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CONSENT AGENDA

In order to make the most efficient use of Commission meeting time and to ensure the Commission members are well informed on issues requiring their action, the staff prepares and submits to the Commission members, in advance of their meeting, internal memoranda consisting of advice, opinions, and recommendations related to the items on the Commission meeting agenda. Those items considered by the staff to be of a routine or noncontroversial

nature are placed on a consent agenda. During the meeting, items can be removed from the consent agenda at the request of any one Commission member. The items that are not removed from the consent agenda are approved with a single motion and unanimous vote by a quorum of the members.

Minutes reflecting approval of items on the consent agenda are singly reported herein and intermingled with minutes reflecting action on related subjects that were openly discussed. Reference to "consent agenda" is made in each minute approved via the process described in the paragraph above. Minutes reflecting action on items removed from the consent agenda and openly discussed reflect the open discussion and vote thereon.

No items were removed from the consent agenda. Upon motion by Commissioner Michie, seconded by Commissioner Schramm, the consent agenda items were unanimously approved by a quorum of Commission members present.

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REPORTS OF COMMISSION COMMITTEES AND COMMISSION RELATED BOARDS

The Commission has five committees (Audit Committee, Bond Financing Committee, Building Committee, Compensation Committee, and Legislative Committee) and elects Commission representatives to two boards (Missouri Transportation Finance Corporation and Highway and Transportation Employees' and Highway Patrol Retirement System). The following committee reports were made during the October 4, 2002, meeting.

Audit Committee

Commissioner Anderson reported that the Audit Committee had met on September 30, 2002. He stated that the financial statement audit being conducted by KPMG will be completed

in three to four weeks, and he recommended that the representatives of KPMG present their audit findings to the full Commission.

Commissioner Anderson reported that the staff has made great progress on closing out federal projects and is currently near the optimum time frame (eight to nine months) beyond completion of a project to formally close it. He emphasized that no funds were delayed or in jeopardy as a result of projects being open for an extended time.

A new financial statement format is being prepared by the staff to provide information to the Commission.

The Audit Committee met with the State Auditor and three of her staff to improve communications and look at efficiencies and economies of scale. Commissioner Anderson reported that he and Commissioner Michie would be participating in some future audit exit conference, to gain experience in this area.

Compensation Committee

Commissioner Schramm reported that the staff is in the process of communicating with the district engineers and functional leaders about issues involved with the job study and will report there on at a future Compensation Committee meeting.

Legislative Committee

Commissioner McKenna reported that the annual Report to the Joint Committee on Transportation Oversight is due in early November 2002. A copy of the report will be made available to each member of the General Assembly. Commissioner McKenna encouraged all members of the Commission to attend the Joint Committee meeting on November 20, 2002, in Jefferson City.

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HEARING – ST. LOUIS REGIONAL CHAMBER AND GROWTH ASSOCIATION

Mr. Dick Fleming, president and chief executive officer of the St. Louis Regional Chamber and Growth Association; Mr. Craig Schnuck, chief executive officer of Schnucks Markets, co-chair of the Forward Metro St. Louis and president of Civic Progress; and Mr. Buzz Westfall, County Executive of St. Louis County and chairman of the East-West Gateway Coordinating Council, spoke in opposition to MoDOT staff recommendations for funding allocation as presented to the Commission at its September 6, 2002, and October 3, 2002, meetings.

Mr. Fleming emphasized that business and community leaders in the St. Louis area had supported increased investment in transportation by contributing nearly \$2 million of funding for the Proposition B campaign, which failed in August 2002. He further advised that St. Louis is working with its bi-state congressional delegation to advocate increased federal funding for both MoDOT and the Illinois Department of Transportation in the national transportation bill, which will be passed in the months ahead.

Mr. Fleming stated that allocation options being recommended by the MoDOT staff will result in a loss of an estimated \$45 million to \$75 million per year for the St. Louis metropolitan planning organization. He stated that the St. Louis business and civic leadership are united in their opposition to the MoDOT staff recommendations for funding allocation. He asked the Commission to take additional time to broadly debate any change to the funding allocation formula. He further asked that the St. Louis business community and elected officials be given an opportunity to participate in that debate.

Mr. Craig Schnuck stated that St. Louis is the economic engine of Missouri. He noted that the St. Louis metropolitan region accounts for the following:

- 41 percent of Missouri's economic output.
- 46 percent of Missouri's total wages and salaries.
- 41 percent of Missouri's employment.
- 38 percent of Missouri's sales tax revenue.
- 89 percent of Missouri's General Revenue budget from individual income and sales taxes.

Mr. Schnuck emphasized that St. Louis is key to Missouri's economic vitality and, therefore, must have a transportation system that supports the region's economic activity.

Mr. Schnuck said the St. Louis business community worked with the Commission/MoDOT to define needs, both regional and statewide. He said they had worked with the Commission/MoDOT for years to develop the well-researched, debated, and negotiated resource allocation methodology that is currently in place. He said it was the business community's understanding that St. Louis would receive one-third of the state's construction program resources. While he felt one-third was less than the fair share due St. Louis, he said the St. Louis business community had agreed to it and was not proposing that the percentage be increased.

Mr. Schnuck stated that the recent defeat of Proposition B, which would have increased funding for transportation, reflects a loss of faith with governmental institutions, in general, and with MoDOT, specifically. He stated that unilateral action, such as that being considered by the Commission on this issue reflects continued controversy within the transportation program.

Mr. Schnuck stated that the proposed funding allocation methods would negatively impact projects critical to St. Louis, such as the rehabilitation of Route 40, a new Mississippi River Bridge, completion of Page Avenue, and improvements to Route 21.

Mr. Schnuck expressed concern that a proposal on funding allocation was being presented to, or considered by, the Commission without the benefit of an open, public debate. He urged the Commission to delay action on this issue in an attempt to seek consensus on this important decision.

County Executive Buzz Westfall stated that the funding allocation proposals presented by the MoDOT staff were biased against the St. Louis region and, therefore, could not be allowed to move forward. He expressed concern that consideration would be given to revising the funding allocation method during a time when the federal transportation legislation is being debated, which may result in a significant funding change that would become effective in less than a year.

Mr. Westfall stated that with the recent defeat of Proposition B, it would be impossible for the Commission to meet all transportation needs in Missouri. He said that St. Louis stands ready to work with the Commission on drafting a reasonable solution, and he asked the Commission to engage in a constructive dialogue about funding allocation with St. Louis and other regions in an attempt to reach a consensus on this issue.

Mr. Westfall stated that MoDOT had approved the East-West Gateway Coordinating Council's 20-year Long Range Transportation Plan, which he felt could not be built with the change in funding allocation methods being considered. He stated that most of the money in Missouri, as well as the majority of votes, come from the St. Louis region. Therefore, he said, if

the St. Louis region does not have confidence in the Commission or MoDOT, no propositions for increased transportation funding will be enacted.

Mr. Westfall stated that St. Louis has always received 33 percent of the construction program dollars. He said while this percentage is less than equitable considering St. Louis' economic contribution to Missouri, they realize that metropolitan areas in every state must subsidize the rest of the state to some extent. However, he stated, reducing the percentage of transportation construction funds for St. Louis would not be acceptable.

Mr. Fleming stated that the St. Louis elected officials and business community have sought to be a working partner with the Commission/MoDOT on transportation funding, as well as to achieve a level of equity and predictability for transportation funding in the St. Louis region. He stated that negotiations leading to the current 33 percent allocation to St. Louis resulted from inequity in the funding allocation from 1992 forward. He clarified that the group was recommending (1) that the Commission delay reconsideration of the funding allocation methodology until the federal transportation reauthorization issue has been resolved, and (2) that any staff recommendations pertaining to this issue be developed with input from the St. Louis business community and elected officials and other areas of the state.

Commissioner Orscheln reviewed past actions by the Commission which resulted in various allocations to the rural and urban areas from 1992 to date. He stated that no single Commission should have the right or authority to set a distribution formula for a future Commission. Commissioner Orscheln stated that the current 50 percent urban, 50 percent rural distribution on construction funds, other than bond financed projects, resulted from a lack of data available to the MoDOT staff on which to determine needs. He noted that the 60 rural: 40 urban

distribution of funds from bond proceeds has been limited to \$900 million, rather than the \$2.5 billion originally anticipated; therefore there has been a shortfall of funds to the rural areas.

The Commission further discussed with members of the delegation and Les Sterman, Executive Director of East-West Gateway Coordinating Council, the process for project selection in the metropolitan planning organization area, Proposition A projects remaining in the St. Louis MPO area, and the process resulting in the current MoDOT staff recommendations for funding allocation.

In response to Commissioner Orscheln's inquiry as to whether an attempt is made to provide a consistent level of pavement and bridge conditions within the St. Louis area, Mr. Sterman stated that the condition level would be affected by their goals: preservation, congestion relief, safety, freight movement, and access to opportunity. He noted that roads carrying higher volumes of traffic receive far greater weight in their process than lower volume roads. He noted that those traveling in the St. Louis area would cite "congestion" as the most important transportation issue. He said, therefore, the St. Louis area is concerned that the funding options being considered by the Commission do not attempt to achieve a balance as it pertains to simultaneously achieving a variety of goals.

In discussing the process used to arrive at the MoDOT staff recommendation for funding allocation, it was noted that Mr. Sterman provided input to the group, but had made known that he did not concur with the resulting options. Mr. Schnuck said the process involved twelve groups, with St. Louis having only one representative, which he did not feel was appropriate given the economic impact and population of the St. Louis area. Mr. Schnuck and Mr. Fleming expressed concern that members of the MoDOT staff had opportunity to advise the St. Louis

business community that consideration was being given to a revised funding allocation method, but they had not done so.

Chairman Gates thanked the delegation for its presentation and stated that no decision regarding funding allocation would be forthcoming during the October 4, 2002, meeting.

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HEARING – DELEGATION PERTAINING TO THE IMPROVEMENT OF ROUTES MM AND W, JEFFERSON COUNTY

Presiding Commissioner Sam Rauls and Mr. Conrad Smith discussed the need for improving Routes MM and W, Jefferson County.

Mr. Smith stated that the alignment of Route MM is narrow and unforgiving of driver errors, which has resulted in fatalities of family members and friends. He advised that an organization of local citizens and elected officials had been formed to focus on this needed improvement, and stated that the District 6 MoDOT staff had been helpful in its attempts to provide information to the group.

Presiding Commissioner Sam Rauls acknowledged the many challenges in transportation planning on both the state and local levels. He stated that with decreasing transportation dollars, all entities must work together to receive the maximum benefit from available funds. Toward that end, he announced that Jefferson County had agreed to fund the Route W relocation study, which had recently been cancelled by MoDOT due to reduced funding. Commissioner Rauls acknowledged that funds to construct this roadway are not currently available; however, he said the Jefferson County staff would work with MoDOT to ensure the most feasible alignment for Route W, as determined by the study, would be in keeping with state standards.

Commissioner Rauls acknowledged the Commission's recent focus on preservation; however, he stated that Jefferson County is in need of roads with improved alignments and higher engineering standards. He stated that Route W was a Proposition A project, and he asked the Commission to honor that commitment to the voters before embarking upon another plan.

Commissioner Rauls commended the Commission and MoDOT for their accountability as evidenced by the annual report to the Joint Committee on Transportation Oversight, and he emphasized that honoring the Proposition A commitments would further build MoDOT credibility.

Chairman Gates thanked the delegation for its presentation.

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HEARING – PUBLIC TRANSPORTATION

Dr. Barbara Grothe, executive director, RegionWise, appeared with a delegation to discuss the efforts of the RegionWise non-profit organization to connect, via public transportation, entry-level jobs with people with entry-level job skills. Those participating in this effort represent four governmental jurisdictions in Missouri (St. Louis City, St. Louis County, St. Charles County, and Jefferson County) and two counties in Illinois (St. Clair County and Madison County).

Dr. Grothe said the St. Louis region is not structured to support successful transition from welfare to work because people are clustered in the core city and job openings are scattered around the rim. She reported that in May 2002 there were 9,169 working age welfare recipients in the City of St. Louis and an estimated 925 entry-level job openings that many could not apply for due to lack of transportation to the job site.

Dr. Grothe stated that people with disabilities and the elderly cannot get to jobs, medical facilities, churches, and other locations. She noted that the aging population will exacerbate that problem. Dr. Grothe also pointed out that public transportation is needed to reduce auto emissions that threaten the St. Louis region's ability to comply with the Clean Air Act.

Dr. Grothe invited a member of the Commission to participate with a 32-member Mass Transit Task Group whose charge is to identify mass transit objectives that are financially feasible, technically sound, and politically possible.

Chairman Gates thanked Dr. Grothe and the other members of the delegation for their presentation and asked the Director to appoint a MoDOT staff member with expertise in public transportation issues to serve with the Mass Transit Task Group.

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DRAFT FRAMEWORK FOR TRANSPORTATION PLANNING AND DECISION-MAKING

By unanimous consensus of all Commission members present, the agenda item titled, "Draft Framework for Transportation Planning and Decision-Making," was withdrawn.

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STATE TRANSPORTATION ASSISTANCE REVOLVING FUND LOANS, APPROVAL OF LOANS

On behalf of the Director, Brian Weiler, Interim Director, Multimodal Operations, and Pat Goff, Chief Financial Officer, recommended approval of the following three requests for State Transportation Assistance Revolving Fund loans.

- a. City of Lebanon – Direct loan of \$216,000 to construct a 12-unit T-hangar facility to be located at the Floyd W. Jones Airport.

- b. City of Bolivar – Direct loan of \$84,000 to construct a corporate hangar to be located at the Bolivar Municipal Airport.
- c. City of Warsaw – Direct loan of \$200,000 to construct a 10-unit hangar to be located at the Warsaw Municipal Airport.

Via approval of the consent agenda, the Commission unanimously approved the recommendation and authorized the Director, Chief Financial Officer, or Interim Director of Multimodal Operations to execute the related loan documents, subject to approval as to form by the Chief Counsel's Office.

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DESIGNATE OLD U.S. ROUTE 54 AS U.S. BUSINESS ROUTE 54, PIKE COUNTY

On behalf of the Director, Kirk Juranas, District Engineer, District 3, recommended that old U.S. Route 54 be designated as U.S. Business Route 54 through the city of Louisiana in Pike County. The additional marking would be added to a section of Missouri Route NN, Georgia Street, and Missouri Route 79.

Via approval of the consent agenda, the Commission unanimously approved the recommendation and authorized the request be forwarded to the AASHTO Route Marking Committee for approval.

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COOPERATIVE TRANSPORTATION IMPROVEMENT AGREEMENT WITH WEST COUNTY CENTER, LLC

On behalf of the Director, Ed Hassinger, District Engineer, District 6, recommended approval of a Cooperative Transportation Improvement Agreement with West County Center,

LLC, to make improvements to the intersection of Route 100 (Manchester Road) and Route JJ (Ballas Road), in St. Louis County. The total project cost is \$4.2 million; MoDOT's part is not to exceed \$245,357. Mr. Hassinger also recommended the project be added to year 2003 of the Statewide Transportation Improvement Program.

Via approval of the consent agenda, the Commission unanimously approved the recommendations and authorized the Director, Chief Engineer, or Chief Operating Officer to execute the agreement.

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MEDICAL AND LIFE INSURANCE PLAN, ADDITION TO PLAN DOCUMENT LANGUAGE

On behalf of the Director, Jeff Padgett, Medical and Life Insurance Plan Board Chairman, recommended a reimbursement policy be added to the medical plan document to allow the medical plan or its administrator(s) to collect reimbursement for any medical claims paid by the plan for which there was third-party liability.

Via approval of the consent agenda, the Commission unanimously approved the recommendation.

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FY 2002 BUDGET UPDATE YEAR-END REPORT

On behalf of the Director, Pat Goff, Chief Financial Officer, recommended the FY 2002 Road and Bridge budget be revised to \$1,983,748,000 from the previously budgeted amount of \$1,984,541,000. This revision is due to a \$793,000 decrease in Other State Agencies' two-year appropriations to reflect the actual amount spent in FY 2002. Mr. Goff also recommended

approval of the final budget amounts for FY 2002, noting that expenditures were within legislative and Commission budget limits.

Via approval of the consent agenda, the Commission unanimously approved the recommendations.

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**AWARD OF CONTRACTS ON FEDERAL-AID AND
STATE PROJECTS, BID OPENING OF SEPTEMBER 27, 2002**

On behalf of the Director, Diane Heckemeyer, State Design Engineer, stated that bids for road and bridge improvement projects had been received on September 27, 2002.

Ms. Heckemeyer presented a tabulation of the bids received on all projects and recommended awards be made to the lowest responsive and responsible bidder noted below.

<u>Route County Project</u>	<u>Bid Amount Plus 3% for Contingencies</u>	<u>Non- Contractual Costs</u>	<u>Contractor</u>
Call 201 36 Livingston J2P0476D	\$9,141,463.70	\$7,389.24	Loch Sand and Construction Co. Maryville, MO
Call 301 70 Montgomery J3I0681	866,065.60	1,556.95	Collins & Hermann, Inc. St. Louis, MO
Call 402 K Henry J4S1583	68,666.66	8,240.00	Hilty Quarries, Inc. Clinton, MO
Call 501 H Gasconade J5M0025	59,079.20		Pace Construction Company, LLC St. Louis, MO

Route County Project	Bid Amount Plus 3% for Contingencies	Non- Contractual Costs	<u>Contractor</u>
Call 601			
64 St. Louis City J6I0985E	25,568,130.74	14,722.96	KCI Construction Company St. Louis, MO
64 St. Louis City J6I0985H			
Call 602			
364 St. Charles J6U1028I	695,476.60		Gershenson Construction Co., Inc. Eureka, MO
Call 603			
30 St. Louis J6P1634	36,581.48		Gerstner Electric, Inc. Fenton, MO
Call 604			
180 St. Louis J6U0806	8,938,483.07	9,870.40	Millstone Bangert, Inc. St. Charles, MO
Call 801			
82 Hickory J8M0054	51,699.28	287.16	APAC-Missouri, Inc. Central Missouri Division Columbia, MO
Call 901			
44 Crawford J9M0033	165,333.01		Jefferson Asphalt Company Jefferson City, MO
Totals	<u>\$48,752,065.71</u>	<u>\$43,789.96</u>	

Construction speed limits conform to the standard work zone speed limits shown on Standard Drawing No. 616.10 as approved by the Commission.

Upon motion by Commissioner Michie, seconded by Commissioner McKenna, the Commission unanimously awarded the projects to the lowest responsive and responsible bidder as recommended and noted above; and authorized an additional three percent of the contract amount for contingencies. The Commission also approved the allocation of funds covering the non-contractual costs included in the various projects, as indicated, and authorized execution of the necessary contracts by the Director, Chief Engineer, or Chief Operating Officer.

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AUTHORITY TO REJECT BIDS

On behalf of the Director, Diane Heckemeyer, State Design Engineer, advised the Commission that bids were received September 27, 2002 on the following project. She recommended all bids on call number 701 be rejected because they were considered excessive.

<u>Route</u>	<u>County</u>	<u>Project</u>
Call 701		
71B and 71	Jasper/Newton	J7U0684 and J7U0684B

The Commission, by unanimous vote of all members present, rejected the bids received on the above-mentioned project.

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ROADWAY LOCATION AND/OR DESIGN APPROVAL

On behalf of the Director, District Engineers informed the Commission that preliminary plans and exhibits for the following projects were advertised for or presented at a public hearing.

Route 63, Adair and Macon Counties
1.0 Mile South of Route KK in Adair County to Route DD in Macon County
Job No. J2P0485

Public Hearing Held July 18, 2002

This improvement will include constructing two new lanes next to the existing lanes making Route 63 a four-lane expressway. Right of way for a future interchange at Route 156 in LaPlata will also be purchased. The current estimated utility relocation and construction cost for this improvement is \$25.44 million. Under a Cooperative Agreement with the Highway 63 Transportation Corporation, MoDOT is committed to initially financing all of the project costs. The Transportation Corporation will reimburse the Commission in the amount of \$11.5 million over a 10-year period, unless additional state funding of sufficient magnitude is obtained by March 15, 2007. In that event, the Transportation Corporation's commitment for the project cost offset will be reduced to approximately \$4 million. Traffic will be maintained over the existing roadway during construction. This project is 21.6 miles in length.

Mr. Mike Bruemmer, District Engineer, District 2, recommended approval of the location and design as presented at the public hearing.

Route F, Jefferson County
0.1 Mile East of Route FF
Job No. J6S1014

Public Hearing Held August 13, 2002

This improvement will replace an existing deficient one-lane bridge structure over LaBarque Creek. Traffic will be maintained over the existing roadway while the new bridge is being built just to the east of the existing bridge. Closure of Routes F, FF and Doc Sargent Road will be limited to a maximum of 45 days, from July 1, 2003, through August 15, 2003, in order to make the connections to the existing roadways. No signed detours will be designated. Local traffic will be able to get around the closure areas by using the Jefferson County roadway system. The County has agreed to this use of their roads for this short period of time and will not require any upgrade or improvements to their system due to the low volume of vehicles. This project is 0.266 mile in length.

Mr. Ed Hassinger, District Engineer, District 6, recommended approval of the design and closure of Route F and Route FF for a maximum of 45 days between July 1, 2003, and August 15, 2003.

After full consideration of the favorable and adverse economic, social, and environmental effects of the recommended locations and designs, the Commission, via approval of the consent agenda, unanimously found and determined the recommended locations and designs would best serve the interest of the public and approved the recommendations.

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**ADMINISTRATIVE RULE
AMENDED RULEMAKING 7 CSR 10-3.010 AND
PROPOSED RULEMAKING 7 CSR 10-3.040
UTILITY AND PRIVATE LINE LOCATION AND RELOCATION**

On behalf of the Director, Diane Heckemeyer State Design Engineer, presented amended rule 7 CSR 10-3.010 and proposed rule 7 CSR 10-3.040. The amended and proposed rulemaking clarify the type of utility facilities permitted and the distribution of costs in connection with the location, relocation or removal of utilities. Ms. Heckemeyer recommended approval of the rulemaking for filing with the Joint Committee on Administrative Rules and the Office of the Secretary of State. She further recommended the Director, Chief Engineer, or the Chief Operating Officer be authorized to execute any document appropriate and necessary for initiating this rulemaking process.

Via approval of the consent agenda, the Commission unanimously approved the recommendations.

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RATIFICATION AND APPROVAL OF RIGHT OF WAY PLANS FOR CONDEMNATION

On behalf of the Director, Diane Heckemeyer, State Design Engineer, recommended the Commission ratify the approval by the Chief Engineer of the following right of way plans, which have been filed for condemnation.

<u>County</u>	<u>Route</u>	<u>Job Number</u>	<u>Date Commission Approved Design</u>
Camden	5	J5P0591	December 3, 1999
Miller	54	J5P0649	August 10, 2001
Ste. Genevieve	61	J0P0672	March 1, 2002

In accordance with Section 227.050 RSMo, the Commission, via approval of the consent agenda, approved the right of way plans for the above noted projects and directed they be filed as necessary for the condemnation of right of way.

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-- REPORTS --

FY 2003 BUDGET UPDATE

This report shows the budget to actual spending status for the Road and Bridge Budget, Multimodal Operations, and One Stop Shop.

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- ADMINISTRATIVE HEARING -

**IN THE MATTER OF REQUEST FOR
ADMINISTRATIVE REVIEW OF NOTICE
TO REMOVE OUTDOOR ADVERTISING
HEARING NO. 00-09-163
TIMOTHY S. AND ALICE M. JONES, APPLICANTS
ADMINISTRATIVE HEARING NO. 675**

This is the final decision and order of the State Highways and Transportation Commission following a request for administrative review of a Notice to Remove Outdoor Advertising issued under Section 226.580 RSMo. by the Missouri Department of Transportation (hereinafter, Department) to Timothy S. and Alice M. Jones, (hereinafter, Applicants).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highways and Transportation Building, Jefferson City, Missouri, on October 17, 2000. The Department was represented by Mr. Bryce Gamblin, Assistant Counsel. The Applicants were represented by Mr. Ronald White, Attorney at Law. The Applicants submitted a brief. Official notice is taken of the calendar for 1999. Section 536.070(6) RSMo. 2000; Meriweather v. Overly, 129 S.W.1, 6 (Mo. 1910); Haller v. Shaw, 555 S.W.2d 703-704 (Mo. App. 1977).

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

FINDINGS OF FACT

This hearing involves an outdoor advertising structure (T. 7-8; Comm. Ex. C-D) owned and maintained by Applicants adjacent to Interstate 44 in Phelps County approximately one mile east of exit 179 on the north side of the highway (T. 6, 9 & 11; Comm. Ex. A).

The sign is visible from the main traveled way and is located within 660 feet of the right-of-way of Route I-44 which is a part of the interstate highway system (T. 9-10).

A prior sign existed at this location (T, 37-38). Mr. Jones contacted Ms. Joyce Musick, the Department's Outdoor Advertising Permit Specialist, about building a new sign (T. 5, 38). Ms. Musick advised Mr. Jones that the existing sign had to come down (T. 39). Applicant removed the existing sign (T. 39). Ms. Musick inspected to see that the sign had been removed and sent Mr. Jones an application to fill out for the next sign (T. 39).

Applicants filed an application for permit with the Department on July 15, 1999, to erect and/or maintain outdoor advertising (T. 11-39; Comm. Ex. G).

According to the application, the sign is located within 600 feet of a business (T. 11, Comm. Ex. G). Likewise, the application described the sign as being v-type, double decked panels with dimensions of 1200 x 2 total square feet and with a 30 foot maximum height of facing and with a 40 foot maximum width of facing and with an overall height above ground of 38 feet (T. 11; Comm. Ex. G).

On July 15, 1999, the Department issued an outdoor advertising permit to Applicants (T. 11-12; Comm. Ex. H). The permit was conditional upon the continued existence of material facts as represented by the applicant in the application for permit (T. 11-12; Comm. Ex. H). According to the permit, if the sign is not erected within 120 days, the permit is void (T. 11-12; Comm. Ex. H).

The 120th day from July 15, 1999, was Friday, November 12, 1999 (official notice of 1999 calendar).

On November 16, 1999, Ms. Musick received a new application (T. 31-32). Upon receipt of the new application, Ms. Musick went out and checked to see if applicants' sign had been completed (T. 32).

On November 19, 1999, a structure existed at the location (T. 8-9; Comm. Ex. E-F). No

displayed message was placed on this structure between July 15, 1999 and November 19, 1999 (T. 45). No message or advertising appeared on the structure on November 19, 1999 (T. 8-9, 14; Comm. Ex. E-F).

On December 1, 1999, the Department issued a Notice to Void Permit to applicants (T. 12-13; Comm. Ex. I). The Notice to Void Permit was issued because the sign was not completed within the 120 day time frame (T. 13). On December 1, 1999, the Department issued a permit to BACKSPO Outdoor Advertising (T. 16; Comm. Ex. J).

On December 10, 1999, a telephone message appeared on the structure (T. 7, 14; Comm. Ex. C). Mr. Jones was not sure whether the message was on before or after he received the Notice to Void Permit which was sent on December 1, 1999 (T. 42).

On December 29, 1999, a "Space Available" was on the structure with the telephone message (T. 8, 43; Comm. Ex. D).

The sign is not located within any city limits (T. 16). The area where the sign is located is unzoned (T. 17).

The Department issued a Remove Outdoor Advertising for the sign which was received by the Applicants (T. 6-7; Ex. A-B).

At the time of the issuance of the Notice to Remove Outdoor Advertising, the sign did not have a permit (T. 16). The alleged unlawfulness of the sign was spacing and sizing provisions (T. 11, 15-16).

CONCLUSIONS OF LAW

The Commission has jurisdiction under Section 226.580 RSMo. The sign is adjacent to and within 660 feet of the nearest edge of right-of-way and is visible from the main traveled way of an interstate highway and, thus, subject to the requirements of Sections 226.500 to 226.600

and the Commission's administrative rules regarding outdoor advertising.

Signs erected or maintained after March 30, 1972, within 660 feet of the nearest edge of the right-of-way of a primary or interstate highway are regulated and limited to directional and other official signs and notices, on-premises signs, signs located in areas zoned commercial, industrial, or the like, signs located within 600 feet of an unzoned commercial or industrial establishment when located in a county without zoning regulations, and nonconforming signs. Sections 226.520, 226.540, 226.550 RSMo. and 7 CSR 10-6.060(2).

There is no evidence regarding the size of applicant's sign or regarding the distance between applicants' sign and the other sign. Further, the Notice to Remove Outdoor Advertising does not allege the failure to obtain or maintain a permit as a basis of unlawfulness. Due to this lack of evidence, we are unable to decide whether the Department properly issued the Notice to Remove Outdoor Advertising and we must remand for additional evidence. The Department and the applicants are free to offer evidence in addition to the evidence at the October 17, 2000 hearing.

ORDER

It is, therefore, the order of the Commission that the cause be remanded to the Commission's Hearing Examiner for additional hearing.

This report and order was adopted by unanimous vote of all Commission members present.

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By unanimous vote of all members present, the meeting of the Commission was adjourned.

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